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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,952	02/19/2004	Roger Snow	HOT FOOT #3	4447
7590	08/31/2004		EXAMINER	
THOMAS R. LAMPE Bielen, Lampe & Thoeming Suite 720 1990 N. California Blvd. Walnut Creek, CA 94596			GRILES, BETHANY L	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 08/31/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.	10/781,952	
Examiner	SNOW, ROGER	
Bethany L. Griles	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 19 February 2004.  
2a) This action is FINAL.                    2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-9 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 1-9 is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 0825.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Cleveland US5163658.

Regarding claims 1, 8, and 9, Cleveland US5163658 discloses a deterrent strip for repelling birds and other pests, said strip comprising, in combination: a plurality of wire support members 10 of electrically non-conductive material forming a wire support member including two spaced wire support portions (adjacent element18) and an inner portion (between sides 12 and 14) disposed between and interconnecting the flexible, bendable base, each spaced wire support portions, the inner portions of adjacent wire support members defining spaces therebetween; at least two electrically conductive, extensible wires 20, 22 disposed along at least a portion of the length said base 10, said spaced wire support portions and spaced from one another; and restraint members 26 attached to and extending between the inner portions support members across the spaces defined thereby resisting lengthwise stretching of said strip.

Regarding claim 2, Cleveland discloses a strip according to Claim 1 wherein said electrically conductive wires are spaced so that a bird or other pest can simultaneously

contact said electrically conductive wires when engaging the strip to short said electrically conductive wires and provide a mild shock to the pest (col 2, lines 1-5).

Regarding claim 3, Cleveland discloses the strip according to Claim 1 wherein said wire support members are integrally connected and wherein said base 10 has side edges 12, 14, said spaces defined by the inner portions of said wire support members comprising notches 16, 18 extending inwardly from at least one of said side edges 12, 14.

Regarding claim 4, Cleveland discloses the strip according to Claim 1 wherein said connectors 26 comprise flexible, readily bendable, substantially non-linearly extensible connectors.

Regarding claim 5, Cleveland discloses the apparatus according to Claim 4 wherein said connectors are integral with said wire support members (please refer to figure 2, which illustrates elements 10 and 26 integrally connected).

Regarding claim 6, Cleveland discloses the strip according to Claim 5 wherein support members are of molded plastic construction (col 2, line 59-62)..

Regarding claim 7, Cleveland discloses the strip according to Claim 4 wherein said connectors comprise segments of a single elongated connector member 26 extending through and projecting from opposed ends of said wire support members 10 and attached to said wire support members.

9 (new): stretching of said strip. An elongated surface to discourage birds and other pests from resting on that surface, the strip comprising, in combination; deterrent strip for mounting to a restraint members attached to a base electrically non-conductive

material, the having edges, the base having one edge thereof to provide the base may be bent both out of base in lateral cross-section spaced notches along at least flexibility to the base whereby the plane and within the plane, said notches extending inwardly from at least one of said edges to define base inner portions spaced from one another; at least two electrically conductive wires secured to and extending along an upper surface of the base, over the notches, the electrically conductive wires spaced so that a pest will simultaneously contact the electrically conductive wires when the pest is on the strip, shorting the electrically conductive wires and giving a mild shock to the pest to discourage it from continuing its perch on the strip when the electrically conductive wires are electrically energized, the electrically conductive wires undulating lengthwise to provide them with give so that they will not disassociate from the base when it is bent or when the wires and base expand or contract at a different rate; and at least one restraint member attached to said base resisting lengthwise stretching of said strip.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Laible US3531090; Roy et al. US6209853; LeMenager FR2550409A1; Merrifieod WO9006674.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Bethany L. Griles  
Examiner  
Art Unit 3643

blg

  
Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600

8/27/04